

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

08/24/2001

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

M. MINKOW
Deputy

LC 2000-001990

FILED: _____

STATE OF ARIZONA

BARTON J FEARS

v.

JOHN R HARRINGTON

DENNIS C JONES

PHX CITY MUNICIPAL COURT
REMAND DESK CR-CCC

MINUTE ENTRY

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Sec. 12-124(A).

This matter has been under advisement and the Court has considered and reviewed the record of the proceedings from the Phoenix City Court and the memoranda submitted by Appellant.

Appellant was charged with solicitation of another person to commit an act of prostitution, a Class 1 misdemeanor in violation of Phoenix City Code Sec. 23-52(a)(2). The act was alleged to have occurred on April 18 of 2000. Appellant entered a plea of not guilty and the case was tried to a jury on September 7-8, 2000. Appellant was found guilty.

The only issue raised by the Appellant concerns whether his due process rights were violated by the State's questions concerning Appellant's post-arrest silence on cross-examination of the Appellant. In this case Appellant invoked his right to remain silent after his arrest and declined to speak with the

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arresting officers. The United States Supreme Court has unequivocally held that after an invocation of the right to remain silent, it "would be fundamentally unfair and a deprivation of due process to allow the arrested person's silence to be used to impeach an explanation subsequently offered at trial."¹

In the case at bar, Appellant had contact with the arresting officers prior to the arrest. Appellant conversed with the arresting officer prior to his arrest. However, the question asked by the prosecutor to Appellant on cross-examination was: "Did you ever indicate to this officer that you were joking?" (emphasis added). Reporter's Transcript of September 8, 2000 at 99. A timely objection was made to this question. Unfortunately, the question posed by the prosecutor was not limited to pre-arrest conversations between Appellant and the arresting officer. As such, this question was an impermissible comment upon Appellant's silence after the invocation of his rights.

IT IS THEREFORE ORDERED reversing the judgment and sentence of the lower court. IT IS FURTHER ORDERED remanding this matter back to the Phoenix City Court for a new trial.

¹ Doyle v. Ohio, 426 U.S. 610, 96 S.Ct. 2240, 2244, 49 L.Ed.2d 91 (1976).
Docket Code 023